



STRATEGIC PLAN

2010-2015

A Strategic Plan For Improving Indigent Defense Systems



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TEXAS TASK FORCE ON INDIGENT DEFENSE

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EX OFFICIO MEMBERS:

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Honorable Wallace Jefferson	Austin, Chief Justice, Supreme Court
Honorable Roberto Alonzo	Dallas, State Representative
Honorable Alfonso Charles	Longview, Judge, County Court at Law No. 2
Honorable Pete Gallego	Alpine, State Representative
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeal
Honorable Jeff Wentworth	San Antonio, State Senator
Honorable John Whitmire	Houston, State Senator

MEMBERS APPOINTED BY GOVERNOR:

Honorable Jon Burrows	Temple, Bell County Judge
Mr. Knox Fitzpatrick	Dallas, Attorney, Fitzpatrick, Hagood, Smith & Uhl
Mr. Anthony Odiorne	Amarillo, Assistant Public Defender, West Texas Regional Capital Public Defender
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Strategic Plan 2010 – 2015

In January 2002 the Texas Fair Defense Act (FDA) became effective after its adoption by the Texas Legislature in 2001. The FDA is a major landmark promoting fairness and justice in Texas. The legislation established, for the first time in the history of the state, an organization to oversee the provision of indigent defense services in Texas. The oversight organization is the Texas Task Force on Indigent Defense (Task Force), a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration (OCA). The Task Force has authority to set statewide policies and standards for the provision and improvement of indigent defense, to grant state funds to counties for that purpose, and to monitor counties' compliance with policies and standards. The Task Force is a body of thirteen appointed and ex-officio members supported by seven full-time staff members. It is headed by the Honorable Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals. Other members of the Task Force and staff are listed on page ii.

The Task Force and staff converged for a two-day (March 25-26, 2010) strategic planning session to take stock of the progress of indigent defense policies in Texas and to chart a strategic vision to guide further improvements. The following highlights the results of this effort.

The challenges ahead involve three distinct but related goals:

Improving Indigent Defense by Policies and Standards Development

Promote Local Compliance and Accountability with the Requirements of the Fair Defense Act through Evidence-Based Practices

Develop Effective Funding Strategies

The strategic plan is oriented toward exploring the best way to accomplish these three goals over the next three to four years.



Goal One: Improving Indigent Defense by Policies and Standards Development

The Task Force is charged with improving indigent defense services through the development of policies and standards. Initiatives under this goal will be undertaken to provide additional consistency and improvement in the way Texas delivers indigent defense services. While the FDA contains a variety of statutory requirements, the Task Force is given broad authority to develop additional policies covering a wide range of indigent defense issues. In approaching this process the Task Force is mindful of the potential costs associated with implementing additional requirements. In a system funded largely by the counties, the Task Force wants to ensure that any new requirements are necessary and can be implemented in a cost effective manner. Depending on the circumstances, the Task Force may choose to promulgate model polices and sample documents rather than mandatory standards.

Strategic Initiatives

- Develop legislative strategy to increase the independence of the indigent defense function at the state level.
 - This strategy will allow the Task Force autonomy to make budget requests and hire/fire the director, while maintaining administrative support relationship with the Office of Court Administration. The strategy may also involve consolidating other defense related functions such as the Office of Capital Writs and State Counsel for Offenders.
- Propose legislation to allow counties to adopt an assigned counsel system independent of the judiciary.
- Develop white papers on
 - effective assigned counsel programs based on national standards and best practices, including reference to resources to help improve assigned counsel systems being developed by the Best Practice Committee of the National Legal Aid and Defender Association’s American Council of Chief Defenders.
 - a framework to manage indigent defense support services, such as investigators and experts.
 - strategies for operating legal clinics providing legal services to indigent defendants and operated by law schools.



- Discuss development of minimum performance guidelines for attorneys as a way to encourage high quality representation, as a tool in training for new defense attorneys, and to provide a measure for effective evaluation of an attorney's performance.
 - This will include collaborating with the State Bar of Texas' Standing Committee on Legal Services to the Poor in Criminal Matters, which is developing attorney performance guidelines.
- Examine the feasibility of creating a video magistrate warning to be used statewide. The video warning will supplement the live warnings given to arrestees to increase the effectiveness and uniformity of the magistration process. The video warning may include foreign language and sign language options.

Goal Two: Promote Local Compliance and Accountability with the Requirements of the Fair Defense Act through Evidence-Based Practices

The Task Force is charged with promoting local compliance with the legal requirements of state law relating to indigent defense. State law requires that competent, qualified counsel be appointed in a timely manner in all criminal cases where the accused is too poor to hire a lawyer.

To implement an evidence-based practice strategy, the Task Force developed a protocol to collect evidence to show whether certain practices are producing desired outcomes. The Task Force has set presumptive thresholds in determining whether some of these outcomes are being met.

Strategic Initiatives

- Publish final fiscal and policy monitoring reports to allow local jurisdictions to implement helpful recommendations into local processes.
 - Develop a more specific protocol for handling noncompliance findings and the imposition of sanctions by the Task Force.
 - Enhance fiscal and policy monitoring review processes. through a risk assessment tool and targeted reviews that review such items as anomalous data reported to the Task Force and the causes of low misdemeanor appointment rates.
 - Identify areas where Task Force resources could improve a local jurisdiction's ability to meet the requirements of the Fair Defense Act.
 - Continue to develop research infrastructure established through relationships with the Public Policy and Research Institute (PPRI) at Texas A&M University, Spangenberg Group and others in order to conduct data-driven research projects at the state level and to support long term policy development..
- Proposed areas in need of study:



- Comparative outcomes produced under different court appointment systems and the circumstances that enable different appointment systems to be successful. For example, determine what circumstances are conducive for a private defender, a rural public defender, a regional specialized public defender, or a mental health defender.
 - Comparative criminal and treatment outcomes for statistically identical mentally ill indigent defendants. The study should compare outcomes for mentally ill defendants represented by mental health public defenders and by assigned counsel, and examine the effects of mental health courts as compared to traditional courts.
 - Test parity between costs of defense and prosecutors in a large, medium, and small county. Consider total cost per case in prosecutor's office versus assigned counsel/public defender.
 - Evaluate the size of attorney caseloads and whether they compromise defense quality. Develop a way to gather caseload information, such as a survey of attorneys or by counting attorneys of record for each case in a county that tracks this info. Could compare outcomes in public defender offices with lower vs higher caseloads. Indicators of quality counsel could include: days to disposition, pre-trial jail days, trials/pleas, disposition (guilty vs. not, probation versus jail time); length of sentence/supervision. Consider using State Bar checklist of things you should do as an attorney in every case as an element of quality assessment.
 - Evaluate the use and lack of use of investigators in some counties and by some attorneys. Consider use of a possible phone survey as cost-effective way to gather information.
 - As a follow-up to the mental health public defender study, test case outcomes for public defender versus assigned counsel cases in Dallas County.
- Monitor fees paid to counsel appointed to represent indigent defendants and the cost per case to assure reasonable compensation is paid to attorneys. These fees will be tracked on each county's data sheet located on the Public Policy Research Institute's website. The data sheet will include variables reflecting felony, misdemeanor, and juvenile costs per case.
- Examine the impact of technology on the use of supplemental video magistrate warnings and the use of video teleconferencing systems in apprising arrestees of their right to appointed counsel.
- Propose legislation to implement a Department of Public Safety (DPS) based tracking system to provide statewide measurement of prompt magistrate's warnings and of prompt appointment of counsel. The system would add following elements to DPS Computerized Criminal History System (CCH):
- Time/date of arrest
 - Time/date of magistration



- Whether the accused requested counsel (and date of request)
- Whether affidavit of indigency completed (and date of completion)
- Whether the accused made bond (and date of bonding)
- The date of appointment of counsel

Goal Three: Develop Effective Funding Strategies

Distributing state funds to counties to improve indigent defense services is a critical responsibility of the Task Force. State funds are distributed in a way that reinforces the Task Force's policies and promotes compliance with the requirements of the Fair Defense Act. Along with the substantive requirements of the FDA, the provision of state funding to assist counties in meeting their constitutional and statutory duties is paramount for improving the delivery of indigent defense services.

During the strategic planning session, the Task Force reached consensus that increased state funding is necessary to assist local jurisdictions to adequately meet state and constitutional requirements regarding the delivery of indigent defense services.

Strategic Initiatives

- **Submit an Increased Legislative Appropriation Request.**
The Task Force will use its legislative directive and authority to identify specific areas for the legislature to provide funds to help counties and the State to meet the constitutional requirements of providing effective indigent defense.
- **Increase Discretionary Funding.**
The Task Force agreed to restructure the current grant program in order to maximize its effectiveness.
- **Encourage through discretionary grant program regional and specialized programs, including:**
 - Rural regional public defenders in counties with low appointment rates
 - Appellate public defender offices
 - Capital public defender offices
 - Other specialized public defender offices focusing on representing mentally impaired or juveniles
- **Examine new ways to promote sustainability for funded programs.**
The Task Force has previously provided long term funding for counties to embark on establishing new programs by using a front-loaded 50%/50% split. The 80%-60%-40%-



20% model currently used allows start-up costs to be pushed to the Task Force funds as appointments for direct client services are being ramped up. The greater complexity associated with governance of program, the greater the need for alternative sustainable funding mechanisms. For example, single county programs can more easily measure impact and cost advantages of improved ID programs while regional programs diffuse costs advantages among or within stakeholder groups. Staff will work with counties and the Task Force to examine various funding models for discretionary grants that meet the needs of sustaining programs while meeting state programmatic and funding requirements. Staff will recommend when appropriate different/longer life cycles when regional programs will benefit

- **Monitor the Impact Between Formula and Discretionary Grants.**
While discretionary grants have a direct impact into a county system, the relationship between a counties formula grant and the discretionary grant is not well known. Staff will monitor the impact of grants and include measures to help determine this impact in future grants.
- **Provide targeted specific funding to counties with indigent defense systems in need of improvement.**
The Task Force will work with state and local officials to address challenges a county faces in providing an effective indigent defense delivery system. The Task Force may provide assistance with evaluating a county's current system and developing a plan to sufficiently address identified issues. Any funding provided to implement the proposed changes will be determined by the Task Force on a case-by-case basis.
- **Assure financial commitment of counties to new programs initially funded by the state so that successful programs are continued even as state funding is phased out.**
- **Explore development of alternative sources of revenue to fund indigent defense, including consideration of seeking federal grant funds.**
- **Target technical support funding on promising projects to assess various components of the indigent defense system and assist in the development of the knowledge base of effective practices.**
- **Develop menu-option grant strategy.** The purpose is to simplify and standardize the application process for counties to replicate model programs previously funded by the Task Force. This program defines specific program requirements, funding schedule, or information for each program type, and approximate amount of funding available.